

NO.

To the

Officer in Charge of the American Mission,

Tokyo.

The Secretary of State refers to the note of April 14, 1953 from the Japanese Minister of Foreign Affairs to the Ambassador concerning the revision of Article XVII of the Administrative Agreement upon the coming into force of the MAFO Status of Forces Agreement.

There are enclosed herewith the following documents which have been drafted by the Department of State and Defense: (1) a note from the Ambassador to the Japanese Minister of Foreign Affairs, (2) proposals for changes in the Japanese draft Protocol to amend Article XVII and (3) proposals for official minutes regarding the Protocol. Any comments of the Embassy and the Far East Command should be telegraphed to the Department as soon as possible. If there are no comments the Embassy is authorized to present the documents to the Japanese Ministry of Foreign Affairs and to enter into discussions for the purpose of reaching agreement on the terms of the Protocol regarding Article XVII and on the terms of official minutes regarding the Protocol.

The Department believes that there are only two United States proposals which may cause difficulty. The first is the proposal to add to the Japanese draft Protocol a

paragraph

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paragraph concerning suspension in the event of hostilities. The second involves the arrangement for the waiver by Japan of its primary right to exercise jurisdiction.

With reference to the proposed paragraph concerning suspension, the Embassy may wish to point out to the Japanese that the paragraph does not enable the United States, by unilateral action, to reestablish exclusive jurisdiction arrangements in the event of hostilities. Any revision of criminal jurisdiction arrangements would have to be made by agreement between the United States and Japan. The United States has declared its intention in the event of hostilities in the NATO countries to take steps to suspend Article VII of the NATO Status of Forces Agreement so far as it is concerned and to seek exclusive jurisdiction in the NATO countries. The Japanese should be informed that the United States intends, in the event of hostilities in the Japan area to seek exclusive jurisdiction over its forces in Japan.

The proposed paragraph concerning suspension describes the circumstances under which the right of suspension may be exercised as "hostilities in the Japan area". This phrase includes, of course, armed attack upon Japan. It is also broad enough to include hostilities in the Ryukyus and other areas near to Japan. Should hostilities be continuing in Korea at the time negotiations are held with the Japanese the Embassy may assure the Japanese that the United States does not intend to seek suspension of current jurisdiction arrangements in Japan because of the hostilities in Korea. In this connection it is assumed that concurrent jurisdiction arrangements will be implemented in such a way as to avoid any interference with the conduct of hostilities in Korea.

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The phrase "Japan area" appears in Article IV of the Security Treaty and in

Article XXIV of the Administrative Agreement. The Government would prefer to avoid any  
precise definition of the phrase and to leave its meaning to be worked out in the course  
of time whenever specific issues are raised.

With respect to the waiver arrangement, the Embassy is requested to seek a qualified  
waiver of the type proposed in the minute regarding paragraph 3(c) of the Protocol. It  
is preferable that such a waiver arrangement be unclassified, but if necessary to secure  
agreement, the waiver may be sought on a classified basis. It is desired, however, that  
some part of the waiver arrangement be unclassified, in order to inform the Japanese  
public that the Japanese Government does not intend to exercise its right of primary  
jurisdiction in many cases. While negotiations regarding the waiver are in progress, it  
is recommended that the Working Group on Procedural Details referred to in the Report-  
and's telegram No. 2649 of May 12 be established to consider practical methods of  
implementation so that, at the completion of the agreement, the Embassy will be satisfied  
that the waiver arrangement will be truly effective in operation.

In the last paragraph of the draft note to the Japanese Foreign Minister the state-  
ment is made that the agreement concluded between the United States and Japan should also  
be made applicable <sup>to</sup> the United Nations forces. This statement concerns only the formal  
agreement, and not the related operating arrangements. The Embassy should not raise the  
question of the applicability to the UN forces of these operating arrangements. If the  
Japanese should raise this question, the Embassy should try to minimize any concern of

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The Japanese over operating arrangements for UN forces on the ground that the necessity for maintaining such forces in Japan will gradually diminish as conditions in Korea become stabilized. However, the Embassy is authorized to restate the U.S. principle that operating arrangements substantially similar to those applicable to U.S. forces should be applied to forces of other nations under the Unified Command in the implementation of the jurisdictional provisions of the UN Forces agreement when that is negotiated.

The Department has indicated in Instruction No. 213 of May 23, 1955 the extent to which public reference can be made to our policy with respect to seeking waiver arrangements in countries to which the NATO Status of Forces Agreement applies. Japanese officials should not be given any further information on U.S. policy with respect to other countries unless the Embassy is convinced that such information will be held strictly confidential by the Japanese officials concerned.

In keeping with our policy with respect to the NATO countries, the aim of the Embassy should be to secure a waiver arrangement as authoritative and extensive as possible without bearing unfavorably on general United States-Japanese relations.

**Enclosures:**

1. Draft note from Ambassador to Japanese Foreign Minister.
2. Draft United States proposals for changes in Japanese draft Protocol.
3. Draft United States proposals for official minutes regarding Protocol.

State-Defense Draft.

7-20-55

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STATE-DEFENSE DRAFT OF JUNE 20, 1953

NOTE FROM UNITED STATES AMBASSADOR  
TO JAPANESE MINISTER OF FOREIGN AFFAIRS

Excellency:

I have the honor to refer to your note of April 14, 1953 with which were enclosed a draft of a protocol on criminal jurisdiction and a draft of official minutes regarding the protocol which Japan proposes to conclude with the United States upon the coming into force of the Agreement between the Parties to the North Atlantic Treaty regarding the status of their forces.

On \_\_\_\_\_ the United States deposited its instrument of ratification of the NATO Status of Forces Agreement. Article XVIII of the agreement provides that thirty days after four signatory states have deposited their instruments of ratification the agreement shall come into force between them. France, Norway and Belgium have already deposited their ratifications. Consequently the NATO Status of Forces Agreement will come into force with respect to the United States thirty days after the deposit of the United States ratification.

My Government is prepared to use the draft of the protocol enclosed with your note of April 14, 1953 as the basis for the immediate initiation of negotiations for an agreement on criminal jurisdiction. Proposals of my Government for

changes

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changes in the draft protocol are enclosed. With respect to the official minutes my Government has prepared a draft which incorporates all except one of the Japanese proposals for the official minutes and which includes a number of additional proposals. My Government suggests that its draft, which is enclosed, be used as the basis for reaching an agreement on the official minutes.

In this connection my Government wishes to state that the agreement concluded between the United States and Japan in accordance with Article XVII paragraph 1 of the Administrative Agreement, providing for incorporation in that agreement of provisions on criminal jurisdiction similar to the corresponding provisions of the NATO Agreement, should also be made applicable to the United Nations forces in Japan through the agreement now under negotiation concerning the status of those forces.

Enclosures:

1. US proposals for changes in the draft protocol.
2. US draft of agreed official minutes regarding the protocol.

\* The Department will advise the Embassy of this date by telegram. If the telegram has not been received by the time the Embassy is ready to present the note, this sentence should be changed to read: "On July 15, 1953 the United States Senate gave its advice and consent to the ratification of the NATO Administrative Agreement."

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State-Defense Draft of July 20, 1953

UNITED STATES PROPOSALS FOR CHANGE IN THE DRAFT PROTOCOL TO AMEND  
ARTICLE XVII OF THE ADMINISTRATIVE AGREEMENT PROPOSED BY  
THE JAPANESE GOVERNMENT ON APRIL 14, 1953

- (1) In the first clause of the preamble the phrase "is to come into force" should be changed to read "came into force".
- (2) In the third clause of the preamble the word "of" should be inserted between the words, "existing provisions", and the words, "Article XVII", and the ending of the clause should be changed to read: ". . . shall be abrogated and the following provisions shall be substituted:"
- (3) In paragraphs 1 and 2, the order of the (a) and (b) sub-paragraphs should be reversed to conform with the NATO agreement.
- (4) In paragraphs 1, 2, 3, 5 and 9 the phrase "or of the civilian component thereof" should be changed to read ", the civilian component," to conform with other articles of the Administrative Agreement.
- (5) In sub-paragraph (a) of paragraph 3, the phrase "a member of the United States armed forces, or of the civilian component thereof" should be changed to read "members of the United States armed forces, the civilian component, and their dependents".

COMMENT: The above proposal would differ from the Japanese proposal only to the extent of making clear that the United States military

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authorities have the primary right to exercise jurisdiction over dependents for offenses solely against United States property or the person or property of another member of the United States armed forces, the civilian component or a dependent. By virtue of paragraph 4 of the Protocol members of the armed forces, the civilian component and their dependents over whom the United States may exercise jurisdiction do not include persons who are nationals of or ordinarily resident in Japan except persons who are dual nationals.

- (6) In paragraph 5(c) the words "a suspect member" should be changed to read "an accused member" to conform with the NATO agreement, and the phrase "or a dependent" should be inserted after the words "civilian component".
- (7) In paragraph 9(e) the words "defense counsel" should be changed to read "legal representation" in 2 places to conform with NATO.
- (8) In paragraph 9(g) delete the clause, "when the rules of the court permit".
- (9) The following paragraph should be added as paragraph 11 of the draft

Protocol:

"11. In the event of hostilities in the Japan area either Japan or the United States shall have the right, by giving 60 days' notice to the other, to suspend the application of any of the provisions of this Article. If this right is exercised, Japan

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and the United States shall immediately consult with a view to agreeing on suitable provisions to replace the provisions suspended."

COMINT: The above paragraph is similar to Article IV of the NATO Status of Forces Agreement, which is part of the original jurisdiction provisions of the NATO agreement. Consequently, in accordance with the first paragraph of Article IV of the Administrative Agreement, the above paragraph should be included in an agreement with Japan on original jurisdiction.

(10) The paragraph on the effective date of the Protocol should be deleted and the following paragraph substituted:

"The present Protocol shall come into effect on the date of its signing."

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State-Defense Draft of July 20, 1953

OFFICIAL MINUTES REGARDING  
PROTOCOL TO THE ARTICLE XVII  
OF THE ADMINISTRATIVE AGREEMENT

(based on Japanese draft protocol revised in accordance with U.S. proposals for c

Re paragraph 1(a) and paragraph 2(a)

The scope of persons subject to the military law of the United States shall be communicated, through the Joint Committee, to the Government of Japan by the Government of the United States.

Re paragraph 2(c)

Both Governments shall inform each other of the details of all the security offenses mentioned in this subparagraph and the provisions governing such offenses in the existing laws of their respective countries.

Re paragraph 3(a)(ii)

It is understood that as part of the normal cooperation between allies, the authorities of a force will decide as to whether or not an offense has been committed in the course of official duty.

Re paragraph 3(c)

It is understood that the Japanese Government does not desire to exercise its primary right to exercise jurisdiction over members of the United States armed forces, the civilian component, or their dependents, except in cases considered to be of particular importance to

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Japan. The United States armed forces will investigate any criminal offense alleged to have been committed by members of the United States armed forces, the civilian component, or their dependents which may be brought to their attention by the competent Japanese authorities or which the United States authorities may find to have taken place and take appropriate punitive action with respect thereto. Where a case is considered to be of particular importance to the Japanese Government it shall notify the United States authorities of its desire to exercise jurisdiction in the case. This notification shall be made in such form, by such authorities and within such time as the Joint Commission may prescribe.

Trials of cases in which the Japanese authorities have waived primary jurisdiction, and trials of cases involving offenses described in paragraph 3(a)(ii) committed against the state or nationals of Japan shall be held promptly in Japan within a reasonable distance from the places where the offenses are alleged to have taken place unless other arrangements are mutually agreed. Representatives of the Japanese authorities may be present at such trials.

Re paragraph 4

It is understood that by virtue of the provisions of Article 7

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primary jurisdiction, for the purpose of the Joint Commission

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of the Administrative Agreement, dual nationals, United States and Japanese, who are brought to Japan by the United States shall not be considered as nationals of Japan, but shall be considered as United States nationals for purposes of this paragraph.

Re paragraph 5(a)

Upon the arrest by Japan of a member of the United States armed forces, the civilian component, or a dependent, the authorities of Japan shall transfer custody of such person to the military authorities of the United States. In cases where Japan has the primary right to exercise jurisdiction the United States will retain custody unless notified that the authorities of Japan consider the case to be of particular importance and desire to exercise jurisdiction. In these exceptional cases in which the Japanese authorities wish to exercise jurisdiction, the United States military authorities will retain custody of such person until he is charged by Japanese authorities, at which time the United States military authorities will transfer custody of such person to the Japanese authorities. The United States authorities undertake to give the Japanese authorities access at any time to such persons while in the custody of the United States.

Re paragraph 5(b)

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Re paragraph 5(b)

The military authorities of the United States shall promptly notify the authorities of Japan of the arrest of any member of the United States armed forces, the civilian component or one of their dependents in any case in which Japan has the primary right to exercise jurisdiction.

Re paragraph 9

*new*  
The rights enumerated in items (a) through (e) of this paragraph are guaranteed to all persons on trial in Japanese courts by provisions of the Japanese constitution. In addition to these rights, a member of the United States armed forces, the civilian component or a dependent who is prosecuted under the jurisdiction of Japan shall have such other rights as are guaranteed under the laws of Japan to all persons on trial in Japanese courts. Such additional rights include the following which are guaranteed under the Japanese Constitution.

- (a) He shall not be arrested or detained without being at once informed of the charge against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause and upon demand of any person such cause must be immediately shown in open court in his

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- (b) He shall enjoy the right to a public trial by an impartial tribunal;
- (c) He shall not be compelled to testify against himself;
- (d) He shall be permitted full opportunity to examine all witnesses;
- (e) No cruel <sup>punishment</sup> shall be imposed upon him.

United States authorities shall have the right upon request to have access at any time to members of the United States forces, the civilian component, or their dependents who are confined in Japanese prisons.

Re paragraphs 10(a) and 10(b)

It is understood that the US authorities will normally make all arrests within facilities and areas in use by the US armed forces. Where persons whose arrest is desired by Japanese authorities and who are not subject to the jurisdiction of the United States armed forces are within facilities and areas in use by the United States armed forces, the United States military authorities will undertake, upon request, to arrest such persons. All persons arrested by the United States military authorities who are not subject to the jurisdiction of the United States armed forces shall immediately be turned over to the Japanese authorities.

The United States military authorities may arrest in the vicinity of a facility or area any person in the commission or attempted commission of an offense against the security of that

facility

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facility or area. Any such person not subject to the jurisdiction of the United States armed forces shall immediately be turned over to the Japanese authorities.

It is understood that the Japanese authorities will normally not exercise the right of search or seizure with respect to any persons or property within facilities and areas in use by the United States armed forces or with respect to property of the United States armed forces/wherever situated. Where search or seizure with respect to persons or property within facilities and areas in use by the United States armed forces or with respect to property of the United States armed forces in Japan is desired by Japanese authorities, the United States authorities will undertake, upon request, to make such search and seizure. In the event of a judgment concerning such property, except property owned or utilized by the United States Government or its instrumentalities, the United States will turn over such property to the Japanese authorities for disposition in accordance with the judgment.

*our language omitted at this point*

Re Paragraph 11

The United States declares its intention in the event of hostilities in the Japan area to seek exclusive jurisdiction over its forces in Japan.

COMMENT: The United States made a similar declaration of intention to seek exclusive jurisdiction in the event of hostilities at the time of the negotiation of the NATO Status of Forces Agreement. This statement forms part of the record of the negotiation.

Re the

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Re the effective date of the Protocol

The provisions of the Protocol shall not apply to any offenses committed before the effective date of the Protocol. Such offenses shall be governed by the provisions of Article XVIII of the Administrative Agreement as it existed prior to the coming into effect of the Protocol.